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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

HERBERT MOLANO, Petitioner and Appellant, v. CITY OF GLENDALE, Respondent.	B203243 (Los Angeles County Super. Ct. No. BS 106394)

APPEAL from an Order of the Superior Court of Los Angeles County. Dzintra Janavs, Judge. Affirmed.

John A. Henning, Jr., for Petitioner and Appellant Herbert Molano.

Scott H. Howard, Gillian van Muyden and Michael J. Garcia, Glendale City Attorneys; Cox, Castle & Nicholson, Michael H. Zischke and Scott B. Birkey; Gatzke Dillon & Balance, Mark J. Dillon and Rachel C. Cook, for Respondent City of Glendale.

Petitioner Herbert Molano appeals the trial court's denial of his writ of mandate seeking to compel respondent the City of Glendale (City) to set aside the certification of its final Environmental Impact Report (EIR) approving the City's project known as the Downtown Specific Plan (DSP or Plan). He raises numerous contentions, the principal thrust of which is that the EIR did not comply with the California Environmental Quality Act (CEQA)[1] because (1) the EIR's description of the DSP was inadequate, and (2) the mitigation measures set forth in the EIR did not sufficiently address the impacts of the DSP.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY[2]

A. The Downtown Specific Plan.

Downtown Glendale is located at the southern base of the Verdugo Mountains, in a valley bounded on the west by the Los Angeles River and Griffith Park and to the east by the San Rafael Hills. Glendale is located adjacent to Burbank, Pasadena, North Hollywood, and downtown Los Angeles. In 2003, the City began preparation of the DSP, and in that regard, formed a Downtown Specific Plan Advisory Group that convened in March 2006.

The Plan is an urban design oriented plan that describes the physical vision of downtown Glendale through policies, land use regulations, and design/development standards and guidelines. Its purpose is to guide development and design of the 220-acre downtown Glendale area. The Plan is intended to, among other things, provide a framework and a manual to guide responsible growth and development downtown; perpetuate a powerful physical image promoting the City's regional identity; ensure the downtown's status as "a good place to do business;" encourage excellence in design and quality of craftsmanship to enhance the downtown environment; strengthen the downtown's pedestrian, bicycle and transit-oriented features; provide incentives for a wide range of

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[1] Public Resources Code §§ 21000, et seq. All statutory references herein unless otherwise noted are to the Public Resources Code.

[2] The certified administrative record consists of 69 volumes (volumes 1 to 68 and 84). In the trial court, petitioner moved to include in the record an additional 15 volumes of uncertified record (volumes 69 though 38), but the trial court denied the motion.

downtown housing; present development regulations in a user-friendly, easy-to-follow manner; preserve and enhance the distinctive character of the City's downtown buildings, streets, and views; and concentrate growth in downtown.

The DSP identified 11 downtown districts, each with unique characteristics. The Plan's proposed land use policies would build on the existing strengths of the downtown area, and add amenities, services, employment and living opportunities. "A mix of land uses is critical to support a diverse downtown climate, enhance the pedestrian quality of the street, reduce vehicle trips, and reinforce the existing varied character of Downtown Glendale. The land use policies encourage the clustering of certain uses as definable districts; designate key ground floor uses; identify opportunities to create mixed-use neighborhoods; and increase the Downtown's supply of open space."

The DSP established permitted land uses for each district, and set forth urban design policies to reflect the pattern of uses, height and density envisioned by the Plan. These policies required new development to conform to the character of existing development in the 11 districts, preserve and reuse historic buildings, protect and enhance views of the Verdugo Mountains, concentrate tall buildings in one area, create good transition between neighborhoods, and enhance pedestrian uses. The Plan set limits on building heights and floor area ratios (FARs) for each district; created standards for building massing and scale; preserved landmark architectural features; and established setback requirements and frontages.

The DSP envisioned the development of a comprehensive open space plan for the downtown, and set forth open space design standards and guidelines. The DSP was intended to develop mobility through and around the downtown area, encourage pedestrian and bicycle traffic, and reduce parking and traffic problems. The Plan provided for incentives and bonuses to encourage desirable uses, such as affordable housing, historic preservation, hotel development, open space, reuse of existing buildings, and sustainable design.

The Plan noted that although a program EIR had been prepared for the Plan, "every new project in Downtown is subject to a project-specific environmental review as required

by [CEQA]." Further, to adopt the Plan, the City and/or its agencies would be required, among other things, to adopt a comprehensive mobility plan, establish funding mechanisms to fund utility improvements required by the cumulative impacts of growth in the Plan area, and streamline the permit and review processes for projects in the DSP area. The Plan also contemplated street improvements to Central Avenue, Glendale Avenue, and street extensions of several streets.

B. Draft EIR.

In August 2006, the City circulated a draft program EIR[3] and started the 45-day comment period on the draft EIR. (See CEQA Guideline § 15105, subd. (a).)

1. Project Summary and Description.

The draft EIR set forth that the DSP was intended to guide development and design within the approximately 220 acres located in the center of the City of Glendale, would develop up to approximately 3,980 residential units and up to a total of approximately 1.7 million square feet of retail and office space, and was anticipated to generate 3,390 jobs in the DSP area.[4] Echoing the language of the DSP, the EIR stated that "[t]he DSP consists of a comprehensive set of incentives, standards, and requirements that will implement the vision for the future development of Downtown Glendale. The DSP will act as a planning tool to guide and direct new development, economic development; streetscape

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[3] A program EIR provides a programmatic analysis of the proposed project, and may be prepared on a series of actions that can be characterized as one large project and are related geographically, as logical parts of a chain of contemplated actions, in connection with the issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. (CEQA Guidelines § 15168, subd. (a).) The Guidelines are found at California Code of Regulations, title 14, section 15000 et seq. and were developed by the Office of Planning and Research and adopted by the California Resources Agency. (§ 2083.))

[4] The DSP area was defined as bounded on the North by Glenoaks Boulevard, on the west by Central and Columbus Avenues, on the south one block south of Colorado Street, and on the east by Maryland and Glendale Avenues.

improvements, transportation development, parking, pedestrian amenities, open space and land use, preservation of cultural resources, and art space. This is an urban design oriented plan, which sets the physical standards and guidelines as well as land use regulations for activities within the DSP area. In order to achieve these goals the DSP proposes General Plan Amendments (GPAs), Zoning Changes (ZC), and District Design Standards."

The draft EIR stated that "the vision for downtown Glendale seeks to preserve and enhance the aspects of each district which provide its unique character, while improving the attractiveness and livability of the downtown area." In particular, the EIR noted that the land use policies built on existing strengths and added amenities, employment, and living opportunities and a mix of land uses were critical to support a diverse downtown climate, enhance pedestrian qualities of the streets, reduce vehicle trips, and reinforce the downtown's varied character. The plan's land use policies would encourage the clustering of certain uses in definable districts, designate key ground floor uses, identify opportunities to create mixed-use neighborhoods, and increase the downtown's supply of open space.

To implement the Plan, the City would be required to certify the final EIR, and adopt the Glendale DSP, General Plan amendments, and associated zone changes. The draft identified areas of controversy and issues to be resolved that had been raised during the period of public review prior to its preparation, including such topics as aesthetics (impacts of height, open space, massing of development, street appearances), cultural resources, parkland, increased traffic, traffic flow, public transit, and school capacity.

Currently, the majority of the downtown area is zoned as Central Business District. Remaining parcels were commercial (C2 and C3), high-density residential (R-1650 and R-1250), commercial mixed use (CMU), residential mixed use (RMU), and special recreation (SR). Under the DSP, the zoning map for the DSP area would be amended concurrently with the adoption of the DSP to include a DSP zone. The General Plan, including the General Plan Land Use Map, would be amended to include a DSP land use designation.

The proposed development under the DSP would include up to 3,980 residential units, and 1.7 million square feet of office development. At the time of preparation, there were approximately 10 development projects within the DSP that were either under

construction, permitted, approved, or pending, and were included in the Project on a program level. "Each of these ten projects[5] and any other future development project within the DSP project area will require separate environmental clearance/review on a project level."

The DSP set forth height limits in each of the districts. Those limits were based upon a 20-foot ground floor and 15 feet for each additional floor and were applied to all districts except the Alex Theatre District and properties on the west side of Brand Boulevard north of California, each of which had different limits.

The draft EIR analyzed cumulative impacts of the project based upon a list of projects identified by the City and neighboring jurisdictions, as well as a build-out of the General Plan.

2. Environmental Analysis.

The draft EIR began with a discussion of the setting relevant to each issue area, and a discussion of the project's impacts to that area. It analyzed "significance thresholds," described the impacts of the proposed project, provided mitigation measures for each impact, and identified the level of significance after mitigation. The significance thresholds were derived from the CEQA Guidelines. The draft EIR discussed inconsistencies between the proposed project and the General Plan and the City's Redevelopment Agency Central Glendale Redevelopment Project Area goals and objectives.

The EIR reported an environmental analysis of aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, population and housing, public services, recreation, transportation and traffic, and utilities and services systems.[6] In each case, the EIR set forth

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[5] Table 3-1 lists the 10 projects, ranging from an eight-story office building to a 272-room hotel.

[6] The environmental analysis section of the draft EIR, at approximately 400 pages, is too voluminous to discuss in detail. However, for each issue, the baseline, significance of the issue, and potential adverse impacts are evaluated, and relevant supporting factual

a baseline (the current environmental setting), project impacts, and mitigation of significant impacts. With respect to each significant impact found in each of these categories, the EIR discussed whether the impact could be mitigated to less than significant levels, whether the impact would be significant and unavoidable, and the cumulative impacts.

3. Significant Environmental Effects and Mitigation.

Pursuant to Guideline 15126.2, subdivision (b), the EIR described significant impacts that could not be avoided even with implementation of feasible mitigation measures. The EIR identified unavoidable project-related or cumulative impacts to aesthetics, air quality, cultural resources, noise, population and housing, public services, recreation, traffic and transportation, and utilities and service systems. The EIR also stated that the Plan would result in significant irreversible impacts if certain conditions (such as large commitments of unrenewable resources, wasteful use of energy, environmental accidents) occurred, and further that growth-including effects could occur if, among other things, the Plan removed an impediment to growth or established a precedent-setting action (such as a change in zoning or general plan amendment).

The drafters concluded, however, that the project would not induce substantial population growth in the area beyond that already forecasted, and that the proposed land uses and zoning were consistent with the existing designation for retail and land uses, and therefore the proposed General Plan Amendment and Specific Plan would not set precedent.

4. Alternatives to the Proposed Project.

The EIR set out in detail three alternative scenarios: (1) No project, with development according to a continuation of the current general plan; (2) reduced (mid-rise) project (66 fewer residential units and 37,500 less square footage of office space), and reduced (low-rise) project (546 fewer residential units and 37,500 less square footage of office space). The analysis included, for each of the identified impacted areas (aesthetics, air quality, etc.), a comparison of the three alternatives with the project. The EIR concluded

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data are referenced to support the discussion. Where relevant to the issues on appeal, we will discuss the EIR in sufficient detail to permit a resolution of each issue.

that Alternative One did not avoid or lessen any of the significant impacts of the proposed project; Alternative Two did not reduce any of the project's significant impacts to a less-than-significant level, but did reduce the severity of many impacts; and Alternative Three would reduce the significant and unavoidable impact to the visual character of the DSP to a less-than-significant level. Of the three alternatives, Alternative Three was described as environmentally superior to the project, but would not meet project objectives.

C. Public Comment and Final EIR.

During the comment period, the City received eight comment letters, including one from petitioner.

On October 20, 2006, the City responded to the comments and issued the final EIR. The final EIR consisted of the draft EIR, with modifications, and incorporated a section on mitigation and monitoring of mitigation measures. On October 27, 2006, the City filed a separate supplemental response to petitioner's comments.

On October 30, 2006, the City's Planning Commission held a public hearing and recommended certification of the EIR and approval of the DSP. The City certified the EIR on October 31, 2006, and approved the DSP on November 7, 2006.

D. Petition for Writ of Mandate.

On December 8, 2006, a Herbert Molano, together with Alan Smolinsky and Conquest Student Housing LLC,[7] filed a petition for peremptory writ of mandate, alleging the City had not complied with CEQA in numerous particulars.[8] Petitioners asserted 11 points of error, primarily contending that the EIR (1) failed to adequately describe the

[7] On January 23, 2008, Smolinsky and Conquest Student Housing dismissed the action as to themselves and are not parties to this appeal.

[8] The petition alleged five causes of action in support of the grant of a writ of mandate: (1) violations of CEQA based upon an inadequate EIR; (2) violations of CEQA based upon a failure to revise and recirculate the draft EIR; (3) the City's failure to adopt findings supported by substantial evidence; (4) the DSP was inconsistent with the City's General Plan; and (5) violation of Government Code section 65451, subdivision (a). Petitioners did not oppose the City's motion for judgment on the pleadings on the fourth and fifth causes of action.

existing conditions or the project; (2) deferred shade impacts to project-level review; (3) understated cumulative impacts; (4) provided inadequate mitigation for glare, historical structures, and wastewater treatment; (5) contained an unsupported finding of no growth inducing impacts; and (6) failed to analyze automatic variance for projects in the pipeline.

On August 31, 2008, the trial court issued its statement of decision denying the petition. The court found that in adopting a program or "first tier" EIR, which was intended to focus review on the environmental issues relevant to the approval being considered, the City made the same type of discretionary timing and tiering decisions upheld in *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729 (*Al Larson*).) Further, the court found the EIR adequately described existing physical conditions and shade impacts, and sufficiently evaluated projects in the pipeline and cumulative impacts. The trial court found that the mitigation for lighting and glare was not illusory, that the EIR addressed comments relating to historical resources and implemented proper mitigation measures for impacts, that the EIR's findings on unavoidable impacts to wastewater, public services, and recreational facilities were supported in the record and consistent with CEQA Guidelines, and that the EIR's finding of no growth-inducing impacts was supported by the record.

DISCUSSION

I. STANDARD OF REVIEW.

We review the administrative record de novo to determine whether a prejudicial abuse of discretion occurred; we are not bound by the trial court's conclusions. (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1023.)

In evaluating the City's certification of the final EIR, we determine whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the City did not proceed in a manner required by law or if its determination is not supported by substantial evidence. (§ 21168.5; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1444-1445.) "[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and

the public, with the information about the project that is required by CEQA." (*Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829.) Error is prejudicial in the CEQA context if "the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)

We apply the substantial evidence test to the City's factual determinations. Under CEQA, substantial evidence means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guideline § 15384, subd. (a).) We resolve reasonable doubts in favor of the agency's findings and decision. (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights*).)

An EIR must contain facts and analysis, and may not consist of the agency's bare conclusions or opinions. It must disclose the "analytic route" the agency used in reaching its conclusions. (*Al Larson, supra*, 18 Cal.App.4th at pp. 739-740.) "An EIR should be prepared with a sufficient analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of the EIR is to be reviewed in light of what is reasonably feasible." (CEQA Guidelines, § 15151.) "Technical perfection is not required; the courts have looked not for an exhaustive analysis but for adequacy, completeness, and a good-faith effort at full disclosure." (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 368 (*Rio Vista*).)

We do not pass upon the correctness of the EIR's environmental conclusions, but only determine whether it functions sufficiently as an informative document. (*Laurel Heights, supra,* 47 Cal.3d at p. 393.) Under CEQA, an EIR is presumed to be adequate, and the petitioner in a CEQA action has the burden of establishing otherwise. We will not

substitute our judgment for that of the City, but we will enforce mandated CEQA requirements. (*Al Larson, supra,* 18 Cal.App.4th at p. 740.)

II. PROGRAM AND TIERED ENVIRONMENTAL IMPACT REPORTS.

The fundamental goals of environmental review under CEQA are information, participation, mitigation, and accountability. (See CEQA Guidelines, § 15002; Guide to CEQA, California Environmental Quality Act (11th ed. 2006), Michael H. Remy, et al., p. 3 (Guide to CEQA).) At the "heart of CEQA" is the EIR. (*Laurel Heights, supra*, 47 Cal.3d at p. 392.)

CEQA requires an EIR whenever there is substantial evidence supporting a fair argument that the proposed project may produce significant environmental impacts. (§ 21080, subd. (d), CEQA Guidelines, § 15064, subd. (f)(1); *Goleta Union School Dist. v. Regents of University of California* (1995) 37 Cal.App.4th 1025, 1029-1030.) An EIR must describe the proposed project and its environmental setting, state the objectives sought to be achieved, identify and analyze the significant effects on the environment, state how those impacts can be mitigated or avoided, and identify alternatives to the project, among other requirements. (§§ 21100, subd. (b), 21151; CEQA Guidelines, §§ 15124 [project description], 15125 [environmental setting].) "The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061.)

The definition of project covers "a wide spectrum, ranging from adoption of a general plan, which is by its nature tentative and subject to change, to activities with a more immediate impact, such as the issuance of a conditional use permit for a site-specific development proposal." (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1315.) The CEQA Guidelines provide for several different types of EIRs to accommodate this diversity. A project EIR examines the environmental impact of a specific development project (CEQA Guidelines, § 15161), while a program EIR can be used where a series of actions can be characterized as one large project (CEQA Guidelines, § 15168), and a master

EIR can be used for a general plan (CEQA Guidelines, § 15175). (*Sierra Club v. County of Sonoma, supra,* 6 Cal.App.4th at pp. 1315-1316.) All types of EIRs must cover the same content. (CEQA Guidelines, §§ 15120-15132.) The level of specificity of an EIR is determined by the nature of the project and the "rule of reason." (*Laurel Heights, supra,* 47 Cal.3d at p. 407.)

In order to achieve CEQA's goals, the Guidelines provide that a program EIR can provide the advantages of a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action, ensure consideration of cumulative impacts that might be slighted if reviewed on a case-by-case basis, avoid duplicative reconsideration of basic policy considerations, and allow the lead agency to "consider broad policy alternatives and program-wide mitigation measures at a time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (CEQA Guidelines, § 15168, subd. (b).)

Where the program EIR acts as an "analytical superstructure" for subsequent more detailed analysis, "[t]he program EIR should identify those probable environmental effects that can be identified. For those impacts that cannot be predicted without undue speculation or for which the deferral of specific analysis is appropriate, the agency can defer such analysis until later points in the program approval or implementation process." Under this approach, subsequent EIRs (CEQA Guidelines, § 15162) can focus on effects not considered in the prior EIR. (Guide to CEQA, *supra*, pp. 638-639.)

A program EIR may be used in a tiering situation. (CEQA Guidelines, § 15152, subd. (h)(3).) "Tiering" of EIRs occurs where analysis of matters contained in a broader EIR is used with later EIRs on narrower, smaller projects. (CEQA Guidelines, § 15152, subd. (a).) The CEQA Guidelines provide that tiering is encouraged for environmental analyses on separate but related projects, including general plans, zoning changes, and development projects. "This approach can eliminate repetitive discussions of the same issues and focus the later EIR . . . on the actual issues ripe for decision at each level of environmental review." However, tiering "does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does

not justify deferring such analysis to a later tier EIR. . . ." Most importantly, "the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed." (CEQA Guidelines, § 15152, subd. (b).)

The Guidelines further provide that with the first tier EIR used in connection with a large-scale project, "the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand." (CEQA Guidelines, § 15152, subd. (c).) A later EIR is required where the initial analysis suggests that a project may cause significant effects on the environment that were not adequately addressed in the prior EIR. (CEQA Guidelines, § 15152, subd. (f).)

Here, the EIR is a program EIR that functions as a first-tier EIR and anticipates later environmental review of specific projects. (See *Al Larson, supra,* 18 Cal.App.4th at p. 741.) Program EIRs functioning as a first-tier document need not provide detailed, site-specific analysis. (*Rio Vista, supra,* 5 Cal.App.4th at p. 371.)

In *Rio Vista,* the County developed a hazardous waste management plan. The plan served as a preliminary guide or first assessment of the County's present and future hazardous waste management needs. The plan assessed current facilities and provided projections for future needs; it also provided siting criteria and recommended policies. (*Id.* at p. 371.) *Rio Vista* upheld the EIR against a challenge that the EIR was vague and it insufficiently described potential future facilities and the degree to which the County had made project-level descriptions. Because the plan served only as an assessment and overview and did not commit to future facilities or make any decisions as to sites, and committed itself to future EIRs, it was sufficient under CEQA as a program or tiered EIR. (*Id.* at pp. 371-372.) *Rio Vista* noted that CEQA requires consideration of future environmental effects of the project actually approved by the agency, not a hypothetical project. (*Id.* at p. 373.)

In *Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, the court addressed whether a proposed shipping terminal fell within two prior EIRs, or whether the City was required to file a supplemental EIR pursuant to section 21166. The project was to be carried out in three phases; the facts demonstrated that although phase I of the project was covered in the first EIR, the subsequent phases arose after the first EIR and were not addressed in the supplemental EIR. "We conclude the most appropriate way to address the [project] is by preparation of a 'tiered' EIR addressing all three phases. . . ." (*Id.* at pp. 284-285.)[9]

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[9] In *Al Larson*, the project was a five-year plan to update the port master plan, with a short-term goal of meeting increased demand for handling commercial cargo through the use of six anticipated projects. The EIR committed the Board of Harbor Commissioners to conduct individual environmental assessments in accordance with CEQA on a project-by-project basis for each of the anticipated projects. The EIR described the projects for informational purposes and stated that approval of the port master plan and the EIR would not constitute approval of the anticipated projects. In that regard, the preferred locations of the proposed projects were provided so that the five-year plan could be discussed in detail. The EIR committed the Board to later EIRs for each of the proposed projects. (*Al Larson, supra,* 18 Cal.App.4th at pp. 737, 742.)

Al Larson concluded the first-tier EIR sufficiently described alternatives and cumulative impacts of the six projects. With respect to the alternatives analysis, the court found no premature approval of specific sites for the six projects, and properly deferred in-depth review to a time when the agency within discretion determined an EIR was appropriate. "Without question, alternatives to each of the six 'anticipated' projects had to be considered at some point. (Fn. omitted.) The real issue is when. The 'determination of the earliest feasible time [to prepare an EIR] is to be made initially by the agency itself, which decision must be respected in the absence of manifest abuse.' [Citation.]" (*Al Larson, supra*, 18 Cal.App.4th at p. 743.) *Al Larson* upheld the Board's deferral of the decision to conduct in-depth EIRs of each of the proposed project, because the EIR did not approve any of the proposed projects. With respect to cumulative impacts, *Al Larson* concluded the Board properly left more detailed consideration of future cumulative impacts to later EIRs. Pursuant to Guideline § 15385, "[w]hile an [EIR] cannot defer all consideration of cumulative impacts to a later time, it may legitimately indicate that more detailed information may be considered in future project EIRs. (*Al Larson, supra,* 18 Cal.App.4th at p. 746.)

III. CEQA COMPLIANCE.

A. Description of the Baseline is Sufficient.

Petitioner argues the baseline is functionally incoherent because the EIR'S descriptions of the environmental setting were too vague. He contends an incomplete baseline has the potential to mask true significance of impacts; as a result he asserts the EIR does not meet the legal standard of providing complete and accurate information to assess whether it adequately investigated and discussed the impacts of the project. In particular, he claims: the Plan area consists of 11 districts, but contains no description of current conditions; development was described as "mid-rise," without defining "mid-rise;" neighborhood density was not defined; the EIR failed to describe areas immediately adjoining the Plan Area; and it contained inadequate photographs of the Plan Area. (See, e.g., *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 723-727 (*San Joaquin Raptor*); *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1122 (*Galante Vineyards*).) We find the baseline description sufficient for a first-tier program-level EIR.

An EIR must contain a description of the physical setting existing at the time of the commencement of the project. (CEQA Guidelines, § 15125, subd. (a).) CEQA Guideline section 15125 further provides that the EIR must include a description of the physical environmental conditions in the vicinity of the project from both a local and regional perspective: "This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an

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In *Citizens for Responsible Equitable Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598 (*CREED*), the petitioners contended that a hotel project was not encompassed in a prior master EIR and a subsequent EIR prepared in connection with the master EIR. (*Id.* at pp. 603-604.) *CREED* concluded that a project-level EIR need not be prepared in every instance where a subsequent project is within the scope of the prior program EIR. "[A] program EIR may serve as the EIR for a subsequently proposed project to the extent it contemplates and adequately analyzes the potential environmental impacts of the project…." (*Id.* at p. 615.)

understanding of the significant effects of the proposed project and its alternatives." Because the concept of a significant effect on the environment focuses on changes in the environment, [CEQA Guideline 15125] requires an EIR to describe the environmental setting of the project so that changes can be seen in context. (Guide to CEQA, *supra,* p. 433; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952 [before impacts of a project can be assessed and mitigation considered, the EIR must describe the environmental setting because it is against this baseline that any significant environmental effects can be determined].)

The description must be accurate, and the environmental setting must be described in sufficient detail to permit an evaluation of the environmental resources affected by the project. (*San Joaquin Raptor, supra,* 27 Cal.App.4th at pp. 722-723.) In *San Joaquin Raptor,* the court found an EIR for a residential development characterized the surrounding area as farmland in agricultural production misleading because it erroneously omitted all discussion of a neighboring wetland area and failed to discuss the adjacent San Joaquin River. (*Id.* at pp. 723-724.) In *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, the court held that in an EIR for a water diversion project, the agency could not rely on historical levels of diversion from the Eel River to describe the setting because this description failed to take into account the fact that a federal agency was planning to curtail diversions in order to protect salmon species. (*Id.* at pp. 873-874.) In *Galante Vineyards, supra,* 60 Cal.App.4th 1109, an EIR for the construction of a new dam and reservoir described surrounding land as undeveloped with some hiking trails and gravel and dirt roads, with low density rural properties and limited grazing. The EIR dismissively referred to nearby vineyards, despite the fact during the draft EIR process it had been informed of the significance of the vineyards to the area. As a result, the EIR was fatally defective. "Due to the inadequate description of the environmental setting for the project, a proper analysis of project impacts was impossible." (*Id.* at p. 1122.)

CEQA Guideline section 15146 provides that "The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR. . . . [¶] (a) An EIR on a construction project will necessarily be

more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy. [¶] (b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow."

Here, the EIR's descriptions of the 11 districts were approximately one paragraph each. Those statements were adequate in the context of this EIR.

Petitioner's other complaint principally relates to the degree of final buildout under the DSP and what can be gleaned about that buildout from the EIR. He contends that although these issues were raised in his comments, the City took the position that such detail was not necessary because "the ERI is a program-level document, and as such does not require detailed discussions of specific sites within the area. . . . Specifics on the precise square footage and number of dwelling units within each district would not add any meaningful information or discussion to the EIR and would not change the outcome of the conclusions presented in the EIR."

Contrary to the picture petitioner paints, the EIR contains a plethora of data. The EIR sets forth at Chapter 3, "Project Description," in Table 3-2 height FAR[10] limits, and street frontages for each of the distracts. A Map (Figure 3-7) sets forth the preferred height limits for the downtown area, ranging from two to 18 floors, and shows the areas in which each height would be permitted. In the Appendix, the DSP sets forth extensive data on land uses and permit requirements for each of the 11 districts, and discusses permissible industrial, recreational, residential, and mixed-use development for each district that include schools, home occupation, gymnasia, theatres, retirement homes, nightclubs, liquor stores, supermarkets, and nurseries.

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[10] "FAR" is defined as "Floor Area Ratio," and is "a common measure of building mass, expressed as a ratio of building area to land area."

With respect to his complaint that the EIR did not adequately set forth the types of developments expected under the DSP and the lack of definition of building size, these arguments lack merit and appear to be a complaint that the detail petitioner seeks is in an appendix, and not the body of the EIR. Appendix I of the EIR contains a discussion of the methodology used to establish buildout under the DSP. It notes that "[Insofar] as the proposed [] DSP is principally a zoning document that allows a wide-range of land uses within a defined physical development envelope, it is difficult to predict with any certainty how much and what type of growth might result from the Plan. To make such predictions it is therefore necessary to rely on a series of reasonable approximations. . . ." The Appendix notes that various sites in the DSP area have been identified as likely candidates for redevelopment (mostly surface parking lots, two-three story parking structures, and one-three story commercial buildings containing underperforming or marginal uses in areas where the DSP permits significantly higher development potential). Further, the buildout of individual sites was based upon residential density that was calculated by using a ratio of units per acre. The density multiplier was based upon the expected building type and height allowed in the DSP for that site. "Assuming that all projects maximize the incentives and bonus program of the DSP, and therefore maximize the DSP zoning envelope, five different building types are expected: 4-5 story mixed use building[s] with residential above ground floor retail /commercial; 5-6 story mixed use building[s] with residential above ground floor retail /commercial; 6-12 story mixed-use tower[s], with residential ground floor retail/commercial; and a 25-story office tower. . . . For the mixed use buildings, residential density is assumed to be 70 units/acre at 4-5 stories, 90 units/acre at 5-6 stories, 100 units/acre at 6-12 stories, and 150 units/acre at 12-24 stories." Appendix I contains detailed tables setting forth numerous sites with detailed information about the current development and potential development at these sites, with the expected residential and office square footage.

Petitioner complains that the EIR describes "surrounding land uses" in a cursory fashion, summarizing them in one paragraph as commercial uses, dominated by auto dealers and medium to high-density residential, on the south side of the downtown area; residential

to the west and east; medium to high-density residential on the north of the downtown area; nonconforming industrial in small area near Wilson Street, and light industrial concentrated on San Fernando Road to the west of the City. At the program level, and given that the project is a specific plan intended to preserve and develop the downtown's unique character and defined districts, these descriptions are sufficient when seen in that context.

Finally, petitioner complains that the EIR only contains six photographs. The DSP, however, contains numerous photographs of each of the districts, and includes photographs of, among other things, the historic Alex Theatre, office buildings, outdoor sculptures, steel and glass high-rises, streetscapes of one-story commercial buildings, mixed-use projects, the Glendale Galleria, commercial chain-store facades, the historic Glendale Post Office (built in 1934 under the WPA), parks, sidewalk cafes, and apartment buildings. Given that the EIR was 600 pages, and the DSP, at 139 pages, was attached to the EIR as an appendix, the lack of photographs in the EIR is not fatal to the adequacy of the EIR's description of the environmental setting.

In light of the fact that the DSP is a blueprint for future City development that is mindful of preserving the character is the City's current 11 districts, and that the EIR is a first-tier program EIR, we find the description of the environmental setting adequate under CEQA. The EIR reveals potential full buildout: it anticipates adding 3,980 residential units and 1.7 million square feet of office space. The DSP sets forth limits for each particular district as to the permissible FAR. The response to comments to the EIR note that "[c]omplete development to the maximum allowable quantity of development, with density bonuses in all instances is not a reasonably feasible scenario. The expectation is that the maximum allowable development would occur on some parcels, but not all parcels, given fiscal, environmental, and physical constraints on the various parcels."

B. Existing Zoning and Planning.

In a related argument, petitioner contends that a complete description of the existing general planning and zoning designations is essential to an evaluation of the project, and complains that the City's EIR obscured the existing zoning and planning. (*City of Redlands*

v. County of San Bernardino (2002) 96 Cal.App.4th 398, 404, 406-407 (*City of Redlands*); Guidelines 15125(d).) We disagree.

Petitioner here specifically contends that although the project consists of a specific plan, general plan amendments, and changes to zoning ordinances, the EIR lacks a complete description of the current general and specific plans and ordinances necessary to permit an evaluation of the changes to be wrought by the Project. For example, the Project Description includes a map of the existing land-use designations, but the legends are indecipherable to a layperson. The comments to the EIR noted this deficiency, to which the City responded: "The EIR focuses on providing a synopsis of the Zoning Code and General Plan changes, and primarily focuses analysis on how these changes will guide development in the Specific Plan Area. The resulting changes that would result from the Zoning Code and General Plan amendments involve two key factors: (1) increased total buildout of the area (explained in detail in Appendix I) and (2) changes to maximum allowable FARs and building heights. Therefore, this is the information most relevant to convey in the Project Description, as these changes are the primary cause of potential environmental impacts."

Petitioner's contentions are without merit. While we agree that an EIR must determine whether a project is consistent with a general or specific plan (CEQA Guidelines § 15125, subd. (d)),[11] there is no such requirement when the project itself is a general or specific plan. To the contrary, CEQA holds that a plan-level EIR must compare a new plan to existing *conditions*, not to an existing *plan.* (*Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 352 (*County of El Dorado*).) In *County of El Dorado*, the EIR compared the proposed plan with the existing general plans for several areas. In holding this methodology improper under CEQA, *County of El Dorado* pointed out that "[CEQA] evinces no interest in the effects of proposed general plan amendments on an existing general plan, but instead has clearly expressed concern

[11] CEQA Guidelines section 15125, subdivision (d) provides, "[t]he EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans."

with the effects of projects on the actual environment upon which the proposal will operate." (*Id.* at p. 354.) Further, in *City of Redlands, supra*, 96 Cal.App.4th 398, upon which petitioner relies, the County approved amendments to its general plan relating to regulation of unincorporated territory with a city's sphere of influence, and adopted a negative declaration for the plan.[12] (*Id.* at pp. 403-404.) The court of appeal found a negative declaration improper under CEQA because the proposed plan amendments would have a significant impact upon the environment. (*Id.* at pp. 408-409.) *City of Redlands* does not stand for the proposition that an EIR must compare plans to each other.

Petitioner's factual contention that the EIR "obscures" the existing general plan is also unfounded. The EIR contains a color-coded map depicting existing land use designations (high-density residential, community services, regional commercial, mixed-use, public/semi-public, and public/recreation/open space). The EIR also contains a color-coded map showing existing zoning within the downtown area (medium-high density residential, high-density residential, residential mixed-use, community commercial, commercial service, central bus district, town center specific plan, commercial mixed use, commercial general restricted, and special recreation). However, because the new zoning will be a "DSP" zone, the EIR's map of proposed DSP zoning consists of the entire DSP plan area, and does not depict where each type of zoning will be in effect. To understand the types of buildings and land uses that would be permitted in the DSP area, the reader can, however, refer to the EIR's descriptions of the DSP districts, its discussion of the regulatory frameworks (federal state and local, including the City's general plan), the tables discussing permissible FARs, and the discussion regarding the City's Greater Downtown Strategic Plan (GDSP). The GDSP designates features of building design, parking structure design, landscaping, and open space design. As discussed above, the DSP sets forth permitted land

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[12] A governmental agency must prepare an EIR on any project that may have a significant impact on the environment. (§21100; *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 570-571.) If there is no substantial evidence of any significant environmental impact, however, the agency may adopt a negative declaration. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399.)

uses by district and permit requirements for numerous uses in each district (e.g., antennas, signs, museums, churches, school, theatres, assisted living, nightclubs, taverns, adult businesses, and types retail stores permitted). We conclude the EIR contains sufficiently detailed and accessible information.

C. Project Description.

Petitioner contends that because of the problems with the baseline, the EIR gave a distorted project description that understated the full buildout under the Plan. In particular, he asserts that the DSP is intended to provide a long-range vision for downtown Glendale, but fails to assume buildings built in the next 25 years might themselves be torn down; the impact of potential development is large. Further, although the DSP places a cap on development that limits it to 20.4 percent of the plan area, there is no provision in the EIR or elsewhere for environmental review to be conducted if development exceeds this level. Therefore, he argues, unlike *Laurel Heights* or *City of Antioch,* in which the public agency was called upon to forecast whether the proposed project would trigger or encourage future projects in the area, and such projections were speculative, such projections are not speculative here. (*City of Carmel-By-The-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 243-245.) Here, petitioner argues the proper course is to assume full build-out under the plan, (*Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 422) resulting in the potential for significant amounts of development to escape environmental review. (See, e.g. CEQA Guidelines, § 15168(c)(2).)

An EIR must contain an accurate, stable and consistent project description. (CEQA Guidelines, § 15124;[13] see also *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d

[13] "The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact. (a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map. (b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency

185, 199.) An accurate description is necessary for the intelligent evaluation of the potential environmental effects of a proposed action. (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.) "CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process." (*Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 366.)

The term "project" is construed broadly to maximize protection of the environment. "A narrow view of a project could result in the fallacy of division . . . that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole." (*McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1144.) The project description should describe the physical development and be sufficiently detailed to provided a foundation for complete analysis of environmental impacts. (CEQA Guidelines, § 15378, subd. (c).) The project description should include reasonably foreseeable activities that may become part of the project. (*Laurel Heights, supra*, 47 Cal.3d at p. 396.) However, an EIR is not required to provide speculation on future development that is unspecified and uncertain. (*National Parks and Conservation Assn. v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1515.)

In *San Joaquin Raptor, supra,* 27 Cal.App.4th 713, the developer of a residential area failed to include sewer expansion, although it was required before the project could be developed and its construction would impact the environment. (*Id.* at p. 731.) By ignoring this required element, the EIR frustrated CEQA's core goal of disclosure and informed decision making. (*Id.* at p. 731-732; *see also Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818.) In *Santiago County*, the court held inadequate a

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develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project. (c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities." (CEQA Guidelines, § 15124.)

project description in an EIR on a proposed mining operation that failed to include water facilities that would need to be constructed to deliver water to the mine. "Because of this omission, some important ramifications of the proposed project remained hidden from view at the time the project was being discussed and approved. This frustrates one of the core goals of CEQA. . . . 'An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.'" (*Santiago County, supra,* 118 Cal.App.3d at pp. 829-830.)

We reject petitioner's contentions. First, CEQA does not require a worst-case analysis, only an analysis of what is reasonably foreseeable. (*Laurel Heights, supra,* 47 Cal.3d at p. 396.) As discussed above, the supplemental response to comments in the EIR states that the City does not anticipate full build-out occurring.

Second, we find adequate the Plan's discussion of the estimated buildout and the assumptions underlying it. First, Appendix I contains the methodology used to establish full buildout. Among other things, the Appendix discusses that a limited number of sites are expected to redevelop, some of them currently in development, and the City identified some future sites that are primarily low-rise (one to three stories). The buildout of individual sites was calculated using a ratio of units per acre derived from GIS data, with the density multiplier calibrated to the expected building type and height allowed under the DSP. For mixed-use buildings, assumptions were made on residential density for various size of projects (from four to 24 stories), and comparisons were made with current developments (within the last five years) in Glendale and nearby cities sharing the same economic and demographic environment.

Contrary to petitioner's assertions, the EIR does not assume that no new buildings will be torn down and redeveloped. In response to petitioner's comments in this regard, the City responded that "recently constructed projects or those with significant existing development generally are not demolished and redeveloped as the result of the implementation of a new set of planning standards." Furthermore, any new development would necessarily have to conform to the DSP, whether it is built next year or in 25 years.

Such new development would be evaluated under CEQA at the time the project developers sought approval.

Finally, petitioner's concern about the City exceeding the building cap under the DSP is premature. Subsequent projects under the DSP will be subject to CEQA review. At that time, a component of the review will include an evaluation of the current state of the buildout under the Plan. Until then, whether the City has reached or exceed permissible full buildout is not ripe for review. In the case of a specific plan, "an environmental impact issue is ripe for consideration when it is 'a reasonably foreseeable consequence' of the plan and the agency preparing the plan has 'sufficient reliable data to permit preparation of a meaningful and accurate report on the impact' of the factor in question." (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028.)

D. Shade Impact Analysis.

Petitioner complains that although the EIR acknowledged construction of future high-rise buildings, it merely designated such impacts as being significant, but refused to further analyze them on the grounds the EIR was a programmatic EIR and therefore such impacts would be evaluated as the individual project were proposed. Petitioner contends that enough was already known about shade impacts to provide a general sense of potential impacts of the Plan as a whole, and that such analysis should be done at the program level because of the nature of shadow impacts, which become greater when cumulated. He asserts that by permitting the City to put off comprehensive shade analysis, the EIR ensures the impacts will be analyzed one building at a time. Therefore, petitioner argues, the City will effectively relieve itself of having to address shade impact by relying on the program nature of the project, and the impact of shade on the Project Area will be chopped into many small pieces in violation of CEQA's command that projects not be piecemealed. (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 76-77 [problem of effects of piecemeal development escaping environmental review].)

An EIR must identity the significant environmental effects of the proposed project. (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492.) The

level of analysis for an environmental impact discussed in an EIR should be proportional to its severity and probability of occurring. "The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR. (a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy. (b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow." (CEQA Guidelines, § 15146.)

In *Towards Responsibility In Planning v. City Council* (1988) 200 Cal.App.3d 671 (*TRIP*), the city rezoned several parcels from agricultural to campus/industrial with the intention that they be developed for high technology industry. (*Id.* at p. 675.) The petitioners argued that the proposed development would precipitate the need for a new sewage treatment plant, and that the EIR did not address this impact. (*Id.* at p. 676.) *TRIP* concluded that such an analysis was premature. The city had in place a plan to monitor wastewater flows regularly; had on track a plan to upgrade and expand wastewater treatment; and would subject any expansion of the plant to full environmental review. In addition, city ordinances prohibited development approvals that would be in excess of the plant's capacity. (*Id.* at p. 680.) "It would be unreasonable to expect this EIR to produce detailed information about the environmental impacts of a future regional facility whose scope is uncertain and which will in any case be subject to its own environmental review." (*Id.* at p. 681; see also *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1448 (*Riverwatch*).) In *Riverwatch*, the developer sought to build a rock quarry in northeastern San Diego County. (*Id.* at p. 1435.) The truck traffic generated by the quarry would require the widening of a state highway, but the draft EIR, while recognizing the potential impact, did not analyze the realignment of the highway on a nearby floodplain. (*Id.* at pp. 1435-1436.) Nonetheless, this omission did not render the EIR defective. (*Id.* at

p. 1448.) The project would not be able to go forward until Caltrans approved the widening of the highway. Therefore, the county could properly defer analysis because the EIR had served its informational function. (*Id.* at pp. 1450-1451.)

Here, we agree with the City that the EIR adequately discussed shade impacts in sufficient detail at the programmatic level. The EIR concluded that implementation of the project would result in new sources of increased shade, a potentially significant impact, but that no feasible mitigation was available to reduce shade to a less-than-significant level. The EIR noted, "Due to the programmatic nature of this EIR, specific project level design plans (including building heights, positioning, and dimensions) are not viable at this time and a complete assessment of shade and shadow impacts or proposed development under the DSP is not possible." The EIR further notes that each future development will be subject to project-level review, and "[t]he project-level design plans will be evaluated, as necessary, to determine the extent of potential shade and shadow impacts upon adjacent shadow-sensitive uses."

Nonetheless, petitioner refers us to the Final Greater Downtown Strategic Master EIR from 1996, in which a detailed shade analysis was conducted, complete with schematics showing the shade created at different times of the year by high-rise buildings. This does not mean, however, that the City was required to do a similar shade analysis for the DSP in order to comply with CEQA. Rather, the EIR recognizes the potential impact of shade and informs the public that this impact is likely not amenable to mitigation, but that each project will be evaluated on its own. At the program level, this discussion is sufficient to provide necessary information to public.

Furthermore, petitioner's concerns that the total shade impacts created by the adoption of the DSP will escape meaningful environmental review because of the incremental nature of any subsequent EIRs for projects within the downtown area are without foundation. Piecemealing occurs where a project is split into segments with the result that its environmental impacts "become submerged by chopping a large project into many little ones – each with minimal potential impact on the environment – which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation*

Com. (1975) 13 Cal.3d 263, 283-284.) Here, no piecemealing will occur because each subsequent project will necessarily have as a baseline for environmental review those projects that have already been built according to the DSP. At that point in time, the project under consideration will be evaluated in accordance with its own new baseline, and accordingly shade impacts will be included in such review.

E. Large Projects in Approval Pipeline Will Not Escape Review.

Petitioner contends that the EIR omitted any description of a series of large development projects, and that these projects in the approval pipeline will escape environmental review.[14] The record contains detailed analysis of such projects by City staff, color design drawings, floor plans, and analysis of the projects. Petitioner contends given the scope of information available, all of the impacts of these projects could have been evaluated in the EIR, but were not. Further, he asserts that in addition to truncating analysis of aesthetic impacts, the exclusion of the pipeline projects undermined analysis of impact categories the EIR purported to analyze, such as air quality and noise. The DSP is filled with "assurances that the wholesale omission from the EIR will be made up for in the future, when the pipeline projects and other individual projects are subjected to project-specific environmental review." Petitioner contends these assurances are no guarantee that significant impacts will in fact be analyzed at the project stage. First, such subsequent review will only be triggered for discretionary approvals, and it is not clear there are any left. Second, even residential condominium development, which would require a discretionary tract map under the Subdivision Map Act, would receive a statutory exemption under CEQA for infill development. (§ 21084; CEQA Guidelines, § 15332.)

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14 The projects include Verdugo Gardens (24 story condominium); Intracorp (16 story mixed use project; a 24-story mixed used project at the corner or Orange and Milford; and a 21-story mixed-use project at the corner of Brand and West Wilson. He contends that, for example, the Verdugo Gardens project is described in the uncertified materials as fully designed, down to the floor plans, location, and landscaping. The building has been fully rendered in drawings. Yet, the final discussion of the building in the EIR consisting of a summary that notes the lot area is 77,916 square feet; there is currently a 3-store office and restaurant on the site, and the potential development will consist of 24 stories, 284 units, with 3,600 to 7,400 square feet of retail space.

Third, the project could pass on grounds it would have no new effects sufficient to trigger an EIR. (CEQA Guidelines, § 15168, subd. (c).) Petitioner contends that the City is not entitled to adopt a specific plan that essentially entitles several pending high-rise construction projects, while avoiding the impact of those projects through the device of a program EIR. He complains that, after commentary raised the significance of the projects, the City omitted the projects from the EIR, concluding: "A building-by-building analysis is appropriate for a project specific analysis and not a program-level document. . . . In addition, such analysis would be speculative because, as the Draft EIR states, the shade impacts depend on the actual buildout of the sites."

Petitioners' arguments are meritless. The purpose of the EIR was to evaluate the environmental impacts of the DSP, not individual projects; further, as a tier-one program EIR, it is not required to evaluate such projects. The EIR states that each project seeking approval under the Plan will undergo its own environmental review because "[t]he [EIR] is a program-level EIR and no specific development projects are being analyzed." To the extent that petitioner argues that projects will not be subject to further review under CEQA, this argument is without factual support. The list of 14 "related development projects" the City compiled consists of past, present and future project and is used for evaluation of a cumulative development under CEQA Guideline 15130, subd. (b)(1). Nothing in the record suggests these individual projects are proceeding or have proceeded without appropriate CEQA review. The record materials relating to the Verdugo Gardens project do not suggest that the Verdugo Gardens has not been subjected to appropriate CEQA review. These materials merely consist of a Stage II Preliminary Review Submission, the first step in the CEQA process. (See *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1371-1372 [describing three-stage CEQA process].)

Finally, to the extent that a future project might be categorically exempt under CEQA (for example, as infill under CEQA Guidelines § 15332), petitioner's concerns are premature. The CEQA Guidelines exempt 33 classes of projects because they are deemed not to have a significant effect on the environment. (§ 20184; *Azusa Land Reclamation Co., v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1191.) Because a

project must establish its entitlement to the categorical exemption, any project put forth for approval under the DSP could be challenged as not qualifying for an exemption (or on other grounds). (CEQA Guidelines, § 15232;[15] see *Azusa Land Reclamation, supra*, 52 Cal.App.4th at p. 1192 [procedure for challenging a notice of exemption].)

F. Cumulative Impacts.

Petitioner contends that the EIR understated cumulative impacts, as they consisted of only one paragraph, and the EIR simply stated that the 14 listed projects were "most likely to contribute to cumulative impacts." In fact, he asserts the EIR's 14 projects unduly limit the focus for cumulative impacts on traffic. Petitioner also complains the EIR limits its geographic context to Glendale, and did not include any summary projections. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723-724; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1216.)

CEQA stresses the significance of a comprehensive cumulative impacts discussion. (CEQA Guidelines, § 15130; *Bakersfield Citizens for Local Control v. City of Bakersfield, supra,* 124 Cal.App.4th at p. 1214; *Laurel Heights, supra,* 47 Cal.3d at p. 394.) "Cumulative impacts" are two or more individual environmental effects of a project which, when considered together, are considerable or which compound or increase other environmental impacts. (CEQA Guidelines, § 15355.) Cumulative impact results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects; cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

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[15] CEQA Guideline § 15232 provides, "Class 32 [categorical exemption] consists of projects characterized as in-fill development meeting the conditions described in this section. (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services."

(CEQA Guidelines, § 15355, subd. (b).)

An EIR's discussion of significant cumulative impacts must "reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided of the effects attributable to the project alone." (CEQA Guidelines, § 15130, subd. (b).) Such a discussion "should be guided by the standards of practicality and reasonableness" but must at a minimum include certain elements. It must contain (1) either (a) a list of past, present, and reasonably anticipated future projects, including those projects outside the agency's control, which produce related or cumulative impacts or (b) a summary of such projections contained in an adopted general plan or related planning document which evaluates regional or areawide conditions, (2) a summary of environmental effects expected to be produced by those projects, and (3) a reasonable analysis of the cumulative effects of the relevant projects and the options for mitigating or avoiding each of the significant cumulative effects. (CEQA Guidelines, § 15130.)

An EIR need not contain a full-blown cumulative impacts discussion if the impacts are found to be insignificant. Where a particular effect is found insignificant, an EIR must briefly indicate the reasons for determining that the effect is not significant and therefore why it is not discused in detail. (See §§ 21061, 21151; CEQA Guidelines, § 15128.) In determining whether the EIR's discussion of cumulative air quality impacts fails to meet the requirements of CEQA and the implementing guidelines, we recognize that the sufficiency of an EIR is to be reviewed in the light of what is "reasonably feasible"[16] and that perfection is not required. (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 429.) On the other hand, the courts have favored specificity and use of detail in EIRs, since a conclusory statement that is unsupported by empirical or experimental data, scientific authorities, or explanatory information affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives. (*Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411.)

[16] "Feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (CEQA Guidelines, § 15364.)

"The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided of the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness." (CEQA Guidelines, § 15130, subd. (b).) "'An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. . . . The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.' [Citations.]" (*Citizens to Preserve the Ojai, supra,* 176 Cal.App.3d at p. 429.) "Under CEQA, the agency must consider the cumulative environmental effects of its action before a project gains irreversible momentum." (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1333.)

Proper cumulative impacts analysis is essential "because the full environmental impact of a proposed project cannot be gauged in a vacuum. [Fn. omitted.] One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact." (*Communities for Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.)

In *Bakersfield Citizens for Local Control, supra,* 124 Cal.App.4th 1184, two shopping center developments within three and one-half miles of each other would have a combined total of 1.1 million square feet of retail space, and both planned the inclusion of Wal-Mart Supercenter Stores. (*Id.* at pp. 1193-1194.) A separate EIR was prepared for each shopping center, but neither EIR discussed the other shopping center. (*Id.* at p. 1213.) The appellate court rejected the developers' contention that the cumulative impacts analysis did not require consideration of the other shopping center, finding the EIRs' cumulative impact analysis underinclusive and misleading due to this omission. (*Id.* at pp. 1216-1218.) "The record raises numerous questions respecting the type and severity of cumulative adverse environmental impacts that likely will result from the two shopping centers. Topics such as

traffic, noise, air quality, urban decay and growth inducement immediately surface." (*Id.* at p. 1218.)

Here, the cumulative impacts analysis used the 14 projects, "as well as a build-out of the General Plan or other criteria, depending upon the specific impact being analyzed." The list of related projects was provided in a table, and included various sizes of condominium projects (from a 38-unit project to a 24-story, 284 unit project), office buildings (eight stories) and mixed-use developments. Chapter 4, containing environmental analysis, discussed the cumulative impacts of the project on each of the 14 analytical categories (aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use/planning, noise, population and housing, public services, recreation, transportation/traffic, and utilities and services systems).

Petitioner also points to problems with the cumulative analysis of traffic, water, land use, noise, and recreation, and its limited geographic scope. Although petitioner's arguments are conclusory, our review of the EIR establishes its discussion is sufficiently detailed to permit an evaluation of cumulative impacts on these environmental factors, and that its scope is appropriate for each analysis undertaken.

First, with respect to the geographic area, each of the environmental impacts requires a different scope for analysis. Selection of the geographic context lies within the agency's discretion. (*Ebbetts Pass Forest Watch v. Dept. of Forestry & Fire Protection* (2004) 123 Cal.App.4th 1331, 1351.) As discussed below, we conclude that the analysis of each impact where petitioner cites deficiencies considered the appropriate geographic scope.

With respect to traffic, the EIR notes that cumulative impacts were not expected to be considerable, based upon the City's findings that although additional significant trips would be generated by the DSP, the Plan would create a slight reduction in highway trips. Furthermore, the DSP would create incentives for the use of alternate transportation. Although this analysis depends upon facts not discussed in detail, for a program-level EIR the information provided regarding potential cumulative impacts is sufficient to permit evaluation of the project because it outlines what the impacts are expected to be.

With respect to hydrology and water quality, the geographic context is described as the Los Angeles River watershed, an 871-square mile area. The EIR notes the project will result in stormwater discharge into the Los Angeles River, and because the proposed project is currently regulated under local and regional permits relating to stormwater discharge, the proposed project would not contribute to watershed-wide water quality impairment, and have a less than significant cumulative impact. The groundwater basins are managed by a "watermaster" operating under court order, and while cumulative growth will result in increased demand, the City has an adequate supply of local and imported water resources at its disposal. Effects on groundwater recharge due to creation of impermeable surfaces as a result of development will be less than significant due to the small surface area involved.

The cumulative impacts discussion for land use states that its context is the City, and includes all cumulative growth within the City, as represented by full implementation of the City's general plan. Because most of the land in the City is developed, planning efforts focus on redevelopment of commercial areas and maintenance of infrastructure and community facilities. The City anticipates that future development will consist of conversion of existing land uses (e.g., residential to commercial or vice-versa) and the proposed developed is anticipated to be compatible with existing land uses and relevant plans, including the general plan. The City concluded any impacts to land use would be less than significant. This analysis is sufficiently detailed.

The EIR's discussion of noise notes that the geographic context of noise depends upon the impacts. For construction noise, only the immediate area is affected; for operation and roadway related impacts, the context is larger, but nonetheless localized. For that reason, the City concluded that only projects within the City would contribute to cumulative impacts. Due to the transient nature of construction noise, the City concluded that cumulative impacts would be less than significant. However, the effect of development and associated noise resulting from increased development and associated activity in both commercial and residential areas would be a cumulative impact that would be significant and unavoidable. Traffic noise would increase substantially, with impacts that are significant and unavoidable.

The EIR found a significant and unavoidable cumulative impact to recreation. The increase in population would lead to an accelerated deterioration of existing parks. The City noted that it was devoting resources to the acquisition and construction of new parks, and that such activities could result in impacts on noise, air quality and traffic, but because the development of open space was a small percentage of overall development, the impact was expected to be less than significant.

G. Mitigation.

Petitioner contends that the EIR's treatment of mitigation for significant impacts of increased glare, impacts on historical resources and lack of sewer capacity was insufficient.

When an EIR discloses significant environmental impacts, an EIR must propose and describe mitigation measures to be taken to minimize the significant environmental effects identified in the EIR. (§ 21002; Guidelines 15126.4, subd. (a)(1); *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 866.) Lead agencies may approve projects with significant impacts that cannot be mitigated if they adopt a statement of overriding considerations. (*Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 244 (*Fairview Neighbors*).)

Mitigation as defined in the Guidelines includes (1) avoidance of impacts by "not taking certain action;" (2) minimizing impacts by reducing the degree or magnitude of action; (3) rectifying the impact by "repairing, rehabilitating, or restoring the impacted environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations, and (5) compensating for the impact by replacing or providing substituted resources. (CEQA Guideline § 15370; *Mira Mar Mobile Community v. City of Oceanside, supra,* 119 Cal.App.4th at p. 495.)

CEQA requires an EIR to identify and examine the full range of mitigation measures. (*League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 909 (*City of Oakland*).) The Guidelines provide that where several mitigation measures are available, the basis for selecting a particular measure must be discussed in the EIR. (CEQA Guidelines, § 15126.4.) An EIR need not discuss alternatives that are remote or speculative and that are unlikely as a practical matter to be

capable of implementation. (*Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1751-1752.) Mitigation may not be deferred unless clear performance standards are set forth in the EIR. (*Fairview Neighbors, supra,* 70 Cal.App.4th at p. 244; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1030.) Finally, mitigation measures must be enforceable. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 445.)

1. Glare Mitigation.

Petitioner argues that although the EIR found there would be substantial new glare created but that the glare would be mitigated to less than significant levels with the proposed mitigation measures, the mitigation measures are illusory because they are wholly dependent upon a determination by the individual project proponents that the prescribed action is appropriate and feasible. Petitioner contends these mitigation measures would not reduce glare to a mitigated level of insignificance because each of these mitigation measures was subject to future determination. (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.)

Petitioner points to the EIR's analysis of three different sources of glare impacts without discussion, and concluded that two of the sources would result in insignificant impact, while the third source would result in significant impact unless mitigated. The first source (proposed signage and associated lighting) was not significant because it would be subject to City code sign regulations. The second source (such as security and safety, that would increase ambient light) was considered insignificant because the downtown area was already highly developed. The third source (reflective building surfaces) was significant; the City proposed mitigation including non-reflective, textured surfaces.

Petitioner contends that although the EIR had seven mitigation measures for light and glare, only three of them had the potential to mitigate the significant impact. The proposed glare and lightening mitigation is not illusory. The EIR found that the DSP would result in increased glare and lighting from exterior building illumination, lighted recreation and athletic facilities, parking facilities, reflective building surfaces, headlights of increased vehicular traffic, security lights, and signage. In addition, there was currently substantial

nighttime lighting in downtown, and new construction resulting from the DSP would increase glare and lighting. However, because of the high level of ambient light currently in the downtown area, an increase in such ambient light due to the DSP was expected to be minimal. In mitigation, the City intended that new lighting at future developments would be designed to minimize spillover into light-sensitive adjacent areas such as schools, hospitals, senior housing, and other residential areas. New buildings, to avoid increased reflection, would incorporate design features to minimize glare by using non-reflective, textured surfaces and non-reflective glass, and implement landscape other buffers to minimize light from headlights and other sources. At project-level review, the projects will be evaluated to determine the extent of potential lighting and glare impacts. Other than the fact that actual implementation of the mitigation measures is deferred to project-level review, which is appropriate in the case of a program-level EIR, petitioner offers no substantive reason why the glare mitigation measures are in and of themselves inadequate.

2. Historic Structure Mitigation.

Petitioner contends that the EIR found the plan would have a significant effect on historic structures, resulting in the demolition of up to 75 buildings, and the EIR concluded that even after mitigation, this impact was unfavorable. Petitioner contends that the EIR failed to consider two feasible measures: (1) use of façade easements, and (2) the application of the State Historic Building Code, which eases requirements for prohibitive upgrades. The final EIR dismissed such proposals, finding them not relevant. Respondent contends the comment period had closed before the comments petitioner references were received (CEQA Guidelines, § 15088, subd. (a)), and that in any event, a general response is sufficient for a general comment. (*Browning-Ferris, supra,* 181 Cal.App.3d at p. 862.)

(a) LATE COMMENTS.

The lead agency must respond in writing to comments during the comment period, and the agency may, but need not, respond to late comments. (*Browning-Ferris*, *supra,* 181 Cal.App.3d at p. 862; CEQA Guidelines, § 15088, subd. (a).) Responses should explain the rejection of commenters' proposed mitigation and alternatives. (CEQA Guidelines, § 15088, subd. (c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 355-360.)

Responses must provide a good-faith, reasoned analysis. (CEQA Guidelines, § 15088, subd. (c); *Friends of the Eel River v. Sonoma County Water Agency, supra,* 108 Cal.App.4th at p. 878.) A general response to a specific question is improper, although a general response to a general comment is adequate. (*Ibid.*) However, in responding to comments, CEQA does not require the lead agency to adopt every mitigation scheme brought to its attention. (*A Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1809.) On review, our task is not to weigh conflicting evidence to determine who has the better argument concerning whether adverse effects have been mitigated or could be better mitigated. (*Ibid.*)

(b) SUFFICIENCY OF RESPONSE.

Historic resources are accorded special protection under CEQA, and the state must to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state" including the protection and rehabilitation of "objects of historic or aesthetic significance." (§§ 21001, subd. (a), 21060.5.) "'Historical resource" includes, but is not limited to, any object, building, structure, site, area, place . . . which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California.'" (§5020.1, subd. (j); *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 186.)

With respect to historic resources, a substantial adverse change in the significance of an historical resource is treated as a significant effect on the environment. (CEQA Guidelines, § 15064.5, subd. (b).) A "substantial adverse change" includes demolition, destruction, relocation, or alteration of the resource or its immediate surroundings resulting in the significance of the resource being materially impaired. (CEQA Guidelines, § 15064.5, subd. (b)(1).) The lead agency must identify potentially feasible measures to mitigate significant adverse changes to an historic resource; a significant adverse change to the historic resource is considered to be mitigated to a less than significant level if the mitigation measure follows the standards adopted by the Secretary of the Interior Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating,

Restoring, and Reconstructing Historic Buildings. (CEQA Guidelines, § 15064.5, subds. (b)(3) and (b)(4).) The CEQA Guidelines recognize that documentation of an historic resource by an historic narrative, photographs, or drawings can serve as sufficient mitigation, although such mitigation may not always mitigate a significant effect to less than significant level. (CEQA Guidelines, § 15126.4, subd. (b)(2).)

In *City of Oakland, supra,* 52 Cal.App.4th 896, the city adopted a negative mitigated declaration for the demolition of a Montgomery Ward building built in 1923. The building, built in an Arts-and-Crafts style with Gothic details, was the first branch of Montgomery Ward in California. At the time Montgomery Ward ceased operations in 1986, the warehouse had fallen into disrepair. (*Id.* at p. 899.) The city sought to redevelop the site, and prepared a negative mitigated declaration in spite of the building's historic and architectural import. The city proposed five mitigation measures, which included (1) preparation of an "historic resources documentation report," (2) a historical building survey; (3) design of the proposed shopping center to be built on the site would reflect elements of the Montgomery Ward building's original architecture; (4) display on the site of a plaque commemorating the building; and (5) consultation with an archeologist to monitor excavation for discovery of possible cultural resources. (*Id.* at p. 901.) The Court of Appeal held that the mitigation measures did not reduce the environmental impacts to an insignificant level. (*Id.* at p. 909.) "A large historical structure, once demolished, normally cannot be adequately replaced by reports and commemorative markers. Nor, we think, are the effects of the demolition reduced to a level of insignificance by a proposed new building with unspecified design elements which may incorporate features of the original architecture into an entirely different shopping center." (*Ibid.;* see also *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1119 [applying reasoning of *City of Oakland* to similar measures proposed to mitigate demolition of historic county jail].)

Here, the EIR noted that the City had previously documented the downtown area's history, including in the City's Historic Preservation Element of the General Plan. Site specific information was collected on properties 45 years of age or older in the DSP area,

and identified 75 properties qualified or potentially qualified to be listed as historic resources at the national, state, or local level, including 10 properties in the DSP area that had been either listed or formally surveyed and determined to be eligible for listing. The EIR concluded that "[a]ny future development project that is located on or immediately surrounding any of the seventy-five known historical resources or potential historic properties located within the DSP area could potentially result in a significant impact to historic resources. Any future development project within the DSP area that would cause a substantial adverse change in the significance of an historical resource would represent a significant impact related to historical resources." With respect to historic resources, the EIR noted that under section 5020.1, subdivision (q), a "substantial adverse change" means "demolition, destruction relocation, or alteration of the resources such that the significance of an historical resource would be materially impaired."

The draft EIR's mitigation measures for historic buildings noted that the identified 75 buildings could potentially be demolished under the DSP, or that nearby development could diminish the integrity of the resource's setting, thereby causing a significant impact to the resource. The EIR concluded that due to the programmatic nature of the EIR, specific projects were not available to evaluate for impact to historic resources, but that when future development projects were proposed, they would be subject to project-level CEQA review.

"However, it is reasonable to conclude at this programmatic level of analysis that new development will likely result under the proposed DSP. Given the large number of known historic resources or potentially historic sites, the project could result in impacts to a historic resource." The City proposed mitigation measures, including that future project development proposals conduct an intensive-level survey of those properties identified in the EIR. Specific mitigation measures included that the requirement that, to the extent feasible, preservation, rehabilitation, restoration, reconstruction, or adaptive reuse of known historic resources meet the U.S. Secretary of the Interior's Standards for Rehabilitation. Any proposal made in accordance with these standards would be deemed not to be a significant impact under CEQA and no additional mitigation would be required. Further, historic street lamps would be reused and repaired, unless infeasible; future development

impacting a historic resource would require a study conducted by a qualified historian or architectural historian to determine whether the proposed project materially alter in an adverse manner the historic resource, in which case the City would determine if mitigation measures were infeasible and if so, adopt a statement of overriding considerations.

Petitioner's comments, submitted October 9, 2006, after the 45-day period had expired on October 2, 2006, stated that with respect to historic resources, "[a]dditional mitigation measures should include use [of] façade easements, possibly financed with redevelopment funds, and use of the State Historic Building Code which eases requirements for upgrades to current codes which can be prohibitively expensive." The City responded to this comment, "CEQA Guidelines provide specific information on what constitutes adequate mitigation for historic resources in Section 15126.4(b), Mitigation Measures related to Impacts on Historical Resources. The Guidelines note that in some circumstances photo documentation will not mitigate effects to less than significant levels. The Guidelines further indicate that where alterations to Historical Resources are conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, impacts generally would be reduced to less-than significant levels. As such, the additional mitigations listed in this comment are not relevant."

Although the City was not required to respond, we find this comment adequate. Given that the City's program-level EIR, which was not considering any specific project that would impact any of the listed 75 historic resources in the DSP area, incorporated the CEQA Guidelines' mitigation measures, and at this level the mitigation implemented was adequate. Further, project-level review will take place of any development impacting a historic resource. Because each historic resource is unique, were the City to attempt to consider a wide-range of mitigation measures at this level, that endeavor would not be cost-effective, nor should the City be required to bind itself to particularized mitigation measures that may prove infeasible on some projects and result in needless expense at the time of future environmental review. Given this backdrop, the City's response to petitioner's comments was entirely appropriate.

3. Mitigation for Significant Impacts on Sewer System and Statement of Overriding Considerations.

Petitioner contends that in adopting the specific plan, the City made findings without any factual support. (CEQA Guidelines, § 15091(a)(3).) In particular, petitioner points to the EIR's findings regarding impacts on the City's sewer systems; the City found that the system serving the plan area might not have the capacity to accommodate additional development. The City found this a significant and unavoidable impact, and proposed no mitigation measure. Petitioner contends this is inadequate; at the program level, the City must evaluate the impact and explain mitigation. (*Stanislaus National Heritage Project* (1998) 48 Cal.App.4th 182, 199-200.)

Petitioner complains of similar cursory review given to impacts on police, fire, and parks. In each instance, the City states that the DSP will increase demand on such services, but the City has no mechanism for imposing a fee, no mitigation measure is available, and the impact is significant and unavoidable. (*Galante Vineyards v. Monterey Water Management District* (1997) 60 Cal.App.4th 1109, 1123.) Petitioner contends that the City has the power to adopt a fee and to impose those requirements. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 140-141.) California Mitigation Fee Act (AB 1600) permits impact fees for infrastructure projects.

A statement of overriding considerations is the final stage in the decision-making process of the agency. An agency may approve a project in spite of identified adverse environmental impacts, but it must explain that mitigation measures or sounder environmental alternatives were not feasible, and that overriding considerations justify the project's approval. (§ 21081, CEQA Guidelines, §§ 15091, 15093;[17] *Sierra Club v. Contra*

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[17] CEQA Guidelines section 15093 provides with respect to a statement of overriding considerations: "(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.' [¶] (b) When the lead agency

Costa County (1992) 10 Cal.App.4th 1212, 1222.) The EIR's findings in that regard must be accompanied by a brief rationale for each and the statement of overriding considerations must be based on information contained in the record. (CEQA Guidelines, §§ 15091, subd. (a); 15093.) While mitigation measures and alternatives findings focus on the feasibility of specific proposed mitigation and alternatives, the "statement of overriding considerations focuses on the larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like." (*Sierra Club, supra,* 10 Cal.App.4th at p. 1222.) The statement of overriding considerations must be supported by substantial evidence. (*Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 32.)

Here, petitioner's arguments are not supported by the record. In certifying the EIR, the City studied the impact of the DSP on the sewer, found that significant impacts could not be mitigated because no fee system was currently in place to upgrade the infrastructure, and adopted a statement of overriding considerations. The statement of overriding considerations found that the economic, social and other benefits of the project outweighed the significant and unavoidable impacts found in the EIR. Yet, petitioner contends this was contrary to CEQA because it is not factually supported and because the City had not immediately adopted a fee-based mitigation program. We disagree.

First, the City's findings on the sewer system's capacity state that the wastewater conveyance system was expected to function through 2020, but the current capacities of the City's sewer trunk lines were unknown, and recognized that they could have greater deficiencies than those identified. Second, with respect to mitigation, the EIR recognizes that significant impact upon sewer services is inevitable under the DSP, and that currently

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approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record. [¶] (c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091."

no fee-based mitigation was in place. However, The EIR recognizes that under the California Mitigation Fee Act (AB 1600), the City can charge new developments "development impact fees" which can be used for infrastructure projects, and under Government Code section 66477, the City can collect fees upon enactment of an implementing ordinance. Furthermore, the City has committed itself to establish a fee to fund utility improvements required by the cumulative impacts of growth.

The same holds true for the City's analysis of the impacts on fire, police, and parks. The City recognized and discussed significant impacts on these services, and that no fee system was in place to facilitate mitigation programs. The EIR commits the City to adopt funding for these programs.

The City has fully disclosed the problems with the sewer system, disclosed that no mitigation measures are in place, and committed to adopting such measures in the future. At the program level, this is sufficient. On that basis, *Stanislaus Natural Heritage Project, supra,* 48 Cal.App.4th 182, is distinguishable because there the first-tier EIR attempted to defer all analysis of the environmental impacts of supplying water to the project until the source was selected in the future. (*Id.* at p. 199.) Here, the City has recognized the environmental impacts and committed itself to a course of action to mitigate them in the future. At the program level, it is not required to commence the action to be required, but only to recognize environmental impacts and evaluate them in accordance with CEQA. The City has complied with this mandate.

Further, because of the unmitigated significant impacts, the City adopted a statement of overriding considerations in accordance with CEQA. This statement stated that the EIR identified significant and unavoidable impacts that would result from implementation of the project. The City found that there were economic, social and other benefits of the DSP that outweighed these impacts. These included the facts that the DSP would: (1) allow the city to foster cohesive, high-quality infill development within the downtown area and presented regulations in a comprehensive, easy-to-follow manner; (2) permit the City to concentrate growth downtown, which would relieve development pressure on residential neighborhoods; (3) permit the City to improve the design quality of development and

encourage pedestrian activity; (4) generate additional tax revenue; (5) result in new housing opportunities for a variety of household types and income levels; (6) strengthen the downtown's pedestrian, bicycle and transit characteristics while ensuring vehicular access; (7) encourage appropriate land use to extend downtown activity into the evenings and weekends; and (8) create additional park and recreation. Petitioner does not challenge these findings, and we conclude the City proceeded in accordance with CEQA.

H. Growth-Inducing Impacts.

Petitioner contends the EIR's finding of no growth-inducing effects was unsupported. (§ 21100(b)(5), CEQA Guidelines, § 15126.2(d).) The EIR found that proposed land use and zoning designations would be consistent with existing designations for commercial and retail land uses and consistent within nature of onsite and surrounding development, and on that basis concluded the Plan would not be growth inducing in the sense that it would remove an impediment to growth or establish a precedent setting action. Petitioner contends this is not supported by substantial evidence because the DSP allows "by-right" development of downtown, at densities significantly higher than those presently allowed, thereby removing an impediment to growth and constituting precedent setting action. (*Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 152, 157-158.) Further, he asserts the City improperly found no growth-inducing impacts based upon a comparison of the proposed DSP with current zoning and planning, rather than comparing the DSP with current conditions. (*Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350.)

An EIR must discuss a project's growth-inducing impacts. (§ 21100, subd. (b)(5); CEQA Guidelines, §§ 15126, subd. (d), 15126.2, subd. (d).)[18] In particular, the EIR must

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[18] CEQA Guideline § 15126.2, subd. (d) provides, "Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new

discuss ways in which the project could directly or indirectly foster economic or population growth, and must discuss growth-including impacts that remove obstacles to growth. As set forth in *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, "[A]n EIR is [not] required to make a detailed analysis of the impact of a project on housing and growth. Nothing in the Guidelines, or in the cases, requires more than a general analysis of projected growth. The detail required in any particular case necessarily depends upon a multitude of factors, including, but not limited to, the nature of the project, the directness or indirectness of the contemplated impact and the ability to forecast the actual effects the project will have on the physical environment." (*Id.* at p. 369.)

In *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, a city was required to prepare an EIR for construction of sewer lines on undeveloped property, even where there was no specific development proposed for the site. "Construction of the roadway and utilities cannot be considered in isolation from the development it presages." (*Id.* at p. 1335.) Because the sole reason for the sewer project would be to provide a catalyst for future development, construction could not commence until environmental impacts were considered under CEQA. (*City of Antioch v. City Council, supra,* 187 Cal.App.3d at p. 1337.) Similarly, in *Stanislaus Audubon Society v. County of Stanislaus, supra,* 33 Cal.App.4th 144, the county issued a negative declaration for a proposed golf course built in an area zoned for agricultural use, and contended the project would not be growth inducing because the developer owned the surrounding land and did not intend to develop it. (*Id.* at p. 156.) In overturning the county's' negative declaration, the court noted that "[t]he current agricultural zoning of the surrounding acreage is . . . not determinative. . . . [T]he record before us contains no assurances that the area surrounding the project will not one day be rezoned . . . thus permitting the residential development." (*Id.* at p. 157; see also *Friends of*

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facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment."

"B" Street v. City of Hayward (1980) 106 Cal.App.3d 988, 1003 [construction of street improvements could lead to conversion of single-family homes to commercial or multi-family uses].)

Here, the City concluded that although the DSP would generate 3,390 new jobs and 3,980 new residential units with a total population increase of 7,166, the DSP would not be growth-inducing. The EIR found this growth rate was consistent with the overall projected growth rate in Los Angeles County for the period between 2005 and 2015. Further, the increased population was within the projected growth for the City without implementation of the project. The City assumed that some of the jobs created by the project would be filled by unemployed current residents of the City. The DSP provided for infill and redevelopment that would make efficient use of existing infrastructure. Finally, none of the zoning changes would set a precedent, but would be consistent with current development. Thus, the DSP would not remove an impediment to growth. The City concluded that any growth under the Plan would not exceed or be inconsistent with projected growth for the City without implementation of the Plan.

Given these underlying facts, we disagree with Petitioner's assessment that the DSP will be growth-inducing and that the City's conclusions are unsupported. As discussed above at length, we do not agree with Petitioner's argument that the DSP creates "by right" development that will not undergo CEQA review. Aside from the obvious distinction that the DSP is not an infrastructure project or other large-scale amenity that would be a magnet for growth and development, we find the City's analysis sound that there is nothing in the DSP that will attract more people than would otherwise come to the City. The population of Southern California will continue to grow, with or without specific plans. To that end, the DSP is designed to control and manage growth in a fashion that will lead to enhancing downtown Glendale's attractive features (streetscapes, shops, historic buildings) while permitting new citizens to live and work in the same area in developments that are designed to facilitate transportation and enjoyment of the urban area.

I. Projects in the City's Review Pipeline Do Not Require a Subsequent EIR.

Petitioner complains that the City added a provision to the adopting ordinance permitting projects in the City's pipeline to apply for a 10 percent variance from all requirements except for height. However, this variance and its impacts were not included in the development assumptions underlying the EIR, although impacts of this scope would normally require their own EIR. (CEQA Guidelines, § 15162.) We disagree.

A supplemental EIR is required where substantial changes to a project require major revisions to the EIR due to new significant environmental impacts that were not considered in the previous EIR. (§ 21166, subd. (a); Guidelines, §15162, subd. (a)(1).)[19] The Guidelines provide that a supplemental EIR need not be prepared unless "[s]ubstantial changes are proposed in the project which will require major revisions of the previous EIR . . . due to the involvement of significant new environmental effects or a substantial increase into the severity of previously identified significant effects." (CEQA Guidelines, § 15162, subd. (a)(1).) New information relating to the project may also trigger preparation of a supplemental or subsequent EIR. (§ 21166, subd. (c); Guidelines, § 15162, subd. (a)(3).) In this event, the Guidelines require that the new information justifying a supplemental or subsequent EIR must be "of substantial importance" and show the project will have "significant impacts" not discussed in the previous EIR. (CEQA Guidelines, §15162, subd. (a)(3).)

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[19] Section 21166 provides: "When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs: [¶] (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report. [¶] (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. [¶] (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." Here, because petitioner cites only to Guideline § 15162, but not to any specific subsection of section 21116, we assume that petitioner challenges the EIR under subdivision (a) for "changes in the project," and "new information" (subdivision (c)).

Even where there is a substantial increase in the severity of an environmental impact, a subsequent EIR is not required if mitigation measures are adopted which reduce the impact to a level of insignificance. (*River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168.) We uphold the City's decision not to prepare a supplemental or subsequent EIR if supported by substantial evidence. (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1397.) After a project has been subjected to environmental review, the statutory presumption shifts in favor of the project proponent. "[S]ection 21166 comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired [citation], and the question is whether circumstances have *changed* enough to justify *repeating* a substantial portion of the process." (*Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1073-1074.)

In *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, a planned medical research center and laboratory complex increased in size from 308,000 square feet to 415,000 square feet, and changed the composition of the buildings from 22 one-story buildings to 23 buildings, five of which would be two-story. The project's footprint increased from seven percent of the site to 7.6 percent. (*Id.* at p. 1545.) The County had prepared an addendum addressing the changes, and noted that grading would increase and storm runoff would increase from the baseline by 18.7 percent from the previous 11 percent. (*Id.* at p. 1546.) The court of appeal upheld the County's decision not to prepare a supplemental or subsequent EIR because there was no evidence of "new significant environmental impacts not considered in a previous EIR." (*Id.* at p. 1549.) More recently, in *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041 (*Moss*), a subdivision's tentative map was approved pursuant to a mitigated negative declaration, but expired due to pending litigation. (*Id.* at pp. 1046-1047.) Five years later, the developer sought approval of the expired map, and the County determined an EIR was required based on new information relating to water supplies and two fish species. (*Id.* at p. 1047.) *Moss* concluded that under section 21166, the County could require a supplemental EIR relating to water supply because of changes in water demand, but that the mere listing of the Coho

salmon on the endangered species list without any evidence a Coho salmon habitat, previously studied, was now affected by the project, did not require additional environmental review. However, additional new information relating to Cutthroat trout indicating it would be affected by the project further required environmental review. (*Id.* at pp. 1059-1060, 1065-1066.)

Here, the variance was implemented as part of Ordinance No. 5541 at section 33, and provides that "Development applications which have been deemed complete prior to the adoption of this ordinance shall be reviewed under the zoning rules and regulations which were in effect on the day prior to the adoption of this ordinance. The foregoing notwithstanding, any applicant may make a request that his or her application be reviewed under the zoning rules and regulations as amended by this ordinance." The ordinance further provides that a project will be deemed in compliance with the DSP if the Planning Director finds that (a) the project is within 10 percent variance of all required standards, although all development projects shall meet the maximum incentive height requirements of the DSP, (b) if the proposed project is within the Glendale Redevelopment Project area, it has already received Stage I approval, or if outside the Redevelopment Project area, it has already received Design Review Board approval, and (c) the project is substantially in conformance with the plans approved by the Agency or the Design Review Board. "Any changes to those plans approved by the Agency or the Design Review Board may not create any new, additional or increased non-conformity with the DSP."

Here, the changes petitioner envisions, such as 105 more dwelling units, 22,818 more square feet of office space, 3,693 more square feet of retail space, and 25,933 gallons of additional sewage per day, may or may not materialize. Even assuming they were to occur because the developers of the pipeline projects sought to take advantage of the 10 percent variance, the increase in the project's size does not amount to "substantial changes" that result in significant new impacts to the environmental requiring supplemental review. First, new projects under the DSP will be evaluated individually, and if the projects in the pipeline have created any new impacts, any further development will be undertaken in light

of what has occurred with the pipeline projects. Second, the projects at issue were part of the group of projects that the City considered for purposes of its evaluation of cumulative impact, and thus were not excluded from environmental review. Finally, petitioner's scenario is pure speculation: a 10 percent variance will not result necessarily in petitioner's scenario; indeed, other changes may occur that may have no environmental impact at all even with a full 10 percent deployment.

DISPOSITION

The judgment of the superior court is affirmed. Respondent is to recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.